IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 353 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JR VYAS - Petitioner(s)
Versus
DIRECTOR OF ACCOUNTS & 2 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR SA DESAI for Respondent(s) : 1 - 2.
RULE NOT RECD BACK for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner a retired employee of Gujarat Agriculture University has challenged an order dated 21-11-2002 passed by the

respondents.

2. Short facts leading to the present case are as follows :

2.1 The petitioner was initially appointed as Assistant Teacher under respondent no.3 School on 05-07-1957. He resigned from service on 23-03-1965. He thereafter, joined the services of respondent no.1 on 24-06-1965 as a Lecturer. He eventually retired upon crossing the age of superannuation in the year 1986. It is the case of the petitioner that his past service in the respondent no.3 school between 05-07-1957 to 23-06-1965 should be counted towards pension and other post retirement benefits.

2.2 The petitioner has placed reliance on Government Resolution dated 7/10/11/1988 which provides inter-alia that upon retirement of teachers from University and non Government Colleges, services rendered by them earlier in non Government Education Institution as teaching or as administrative staff, to count towards pension if the earlier employer had made the pension scheme applicable to its employees. The petitioner has

also placed reliance on a circular dated 06-12-1991 issued by the respondents by virtue of which under certain circumstances, past service put in by the employees shall count towards pensionary benefits.

2.3 The petitioner has also produced an order dated 14-03-2000 by which the respondents no. 1 and 2 found the petitioner eligible to count his previous service in the respondent no.3-School to count towards his pensionary benefits.

3. The learned advocate Ms. Pahwa for the petitioner contended that the above-mentioned circulars clearly provides that service put in by the petitioner with respondent no.3-School prior to his joining the service of the University should count towards his pensionary benefits. She pointed out that University itself has passed order dated 14-03-2000 to this effect. However, subsequently by impugned order dated 21-11-2002, respondents altered the position in this regard.

4. The learned advocate Shri Desai opposed the petition on the basis of affidavit in reply filed. He submitted that resolution dated 06-12-1991 issued by the

University is clear in its contents and case of the petitioner is governed therein. Though the learned advocate for the petitioner submitted that the impugned order was passed without hearing the petitioner and that no reasons have been indicated for cancelling the earlier order dated 14-03-2000, after some discussion at bar, she agreed that these submissions may not be pressed in service since eventual acceptance of these contentions may only lead to issue being remanded to the authorities for reconsideration. She therefore, submitted that this Court may decide the issue on the basis of available material on record.

5. Having heard the learned advocates appearing for the parties, I find that there is no dispute about the fact that University has to bear the pension to be paid to the petitioner and that Government in no way is responsible for payment of pension to the petitioner. In that view of the matter, resolution dated 06-12-1991 issued by the University would govern the situation. In the said resolution it is clearly provided that past services rendered by the employees would count towards their pensionary benefits on certain terms and conditions. Condition no.1 specifies that such services

should have been rendered as employee of the Central Government or in autonomous institution under the Central Government or under the State Government or the autonomous institution under the State Government before joining the services under the University and that previous employer should have implemented the pension scheme which the employee should have accepted. Clearly in the present case the said condition is not satisfied. The petitioner was employed by a private aided school. The school cannot be considered to be autonomous institution under the State Government. The request of the petitioner for counting the past service rendered in private aided school towards pensionary benefits from University, therefore, cannot be accepted.

6. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)